

REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

After entry of the foregoing amendment, Claims 195-201 and 203 are pending in the present application. No new matter is added.

By way of summary, the Official Action presents the following issues: Claims 195 and 202-203 stand rejected under 35 U.S.C. §101; and Claims 195-203 stand rejected under 35 U.S.C. §103 as being unpatentable over Rangan et al. (U.S. Patent 6,006,265, hereinafter Rangan) in view of Marsh et al. (U.S. Patent 6,876,974, hereinafter Marsh).

REJECTIONS UNDER 35 U.S.C. §101

The Official Action has rejected Claim 195 and 202-203 under 35 U.S.C. §101 as allegedly reciting nonstatutory subject matter. Applicant respectfully traverses the rejection.

At paragraph 2 of the Official Action it is noted that:

With respect to the 101 rejection, the applicant seems to be confused regarding the nature of the rejection. The Examiner is not stating that software elements cannot be included within a claim. Instead, the 101 rejection is made because the **claimed** system is directed only towards software elements. If a system comprises only software elements then the system can only be software. The applicant has not pointed any portion of the applicant's specification that limits the interpretation of the term "system" to hardware. (Emphasis in original).

As previously pointed out in the response filed August 8, 2007, the current claims embrace the embodiments described in the specification. These embodiments include hardware elements. Moreover, it was noted that software elements that do not, in and of themselves, render claims non-statutory. While the Official Action notes that the Applicant has not pointed to any portion of the Applicant's specification that "limits the interpretation

of the term system to hardware”, this is not the Applicant’s burden. Instead, it is the burden of the Office to factually support the assertion that “the claimed system is directed only towards software elements”.

Nevertheless, in order to advance prosecution of this case, Applicant respectfully directs the Examiner’s attention to page 12 and Figures 1 and 2 of the specification. It is noted that these Figures and descriptions describe terminal and server implemented control sections. Tables 1-8, pages 12-15 of the specification also lay out in great detail the various combination of components and their respective locations within the terminal and/or server devices. Moreover, it is noted that at page 8 of the specification, Figure 2 is described as a “block diagram depicting a data terminal apparatus” incorporated in the data-providing system. Accordingly, it is sufficiently clear that the claims are directed to aspects of the Applicant’s disclosure which describe hardware.

Accordingly, Applicant respectfully requests that the rejection of Claims 195 and 202-203 under 35 U.S.C. § 101 be withdrawn.

REJECTIONS UNDER 35 U.S.C. §103

The Official Action has rejected Claims 195-203 under 35 U.S.C. §103 as being unpatentable over Rangan in further view of Marsh. The Official Action contends that Rangan describes all of the Applicant’s claimed features with the exception of attributes including a conflict attribute identifying associated content data which is precluded from assembly with predetermined other content data for providing new content data. However, the Official Action cites Marsh as describing this more detailed aspect of the Applicant’s claimed advancement, and states that it would have been obvious, to one of ordinary skill in

the art that the advancement was made, to combine the cited references for arriving at the Applicant's claims. Applicant respectfully traverses the rejection.

Applicant's amended Claim 195, recites, *inter alia*, a data providing system, including:

a first data-transmitting section configured to transmit a continuous stream of content data including multimedia content groups, each including program data and auxiliary data items;

an edit control section configured to perform an editing operation on attributes of each program data and auxiliary data items, thereby automatically assembling new content data, the attributes including a conflict attribute identifying associated content data which is precluded from assembly with predetermined other content data for providing new content data; and

...

wherein the auxiliary data items include, at least, a validity term and conditions relative to the assignment of rights for editing attributes of each auxiliary data item. (emphasis added)

Rangan describes a digital video communication system including a VOW server (1). As shown in Figure 1, live content (2) is delivered to a digital network (4) by Internet service providers (5). The content (2) is provided to SUVs (7). The VOW server (1) inserts hyperlinked data to the content (2) for delivery to the SUVs (7).¹ As shown in Figure 9, when an SUV actuates a hyperlink of the content (2) the VOW server may employ a security protocol for blocking content from a user, for example, to restrict child access to adult material.²

Marsh describes an advertisement display scheduler resident on a user's computer. The scheduler (700) monitors the client's system (101) for scheduling the presentation of advertisements. In determining such presentation, the scheduler (700), may eliminate

¹ See Rangan at column 24, lines 31-60.

² See column 28, lines 33-50 of Rangan.

conflicting advertisements or delay their presentation based upon the presentation of computing advertisements.³

Conversely, in an exemplary embodiment of the Applicant's claimed advancements, a data providing system is provided including a first data transmitting section. The first data transmitting section is configured to transmit a continuous stream of content data including multimedia content groups. Each of the multimedia content groups includes program data and auxiliary data items. An edit control section is provided to perform an editing operation on attributes of each program data and auxiliary data items. The editing operation automatically assembles new content data. The attributes include a conflict attribute identifying associated content data which is precluded from assembly with predetermined other content data for providing new content data. A second data transmitting section is configured to select auxiliary data items to be inserted into the program data in accordance with the new content data assembled by the edit control section. In this way, the second data transmitting section transmits a continuous stream of adapted content that includes multimedia content groups each including the program data and the auxiliary data items. The auxiliary data items include, at least, a validity term and conditions relative to the assignment of rights for editing attributes of each auxiliary data item.

In the Response filed August 8, 2007 it was pointed out that the current claims require that auxiliary data items **INCLUDE** a validity term and conditions relative to assignment of rights for editing attributes of each auxiliary data item. In response, the Official Action of October 29, 2007 asserts that:

With respect to the 103 rejection, the cited portion of Rangan reads on the claims because Rangan states that, "the hotspot linking is used to control security and access to videos" (col. 28, lines 34-35) and Rangan discusses a "security or e-commerce type of click" (col. 28, lines 43-44). So Rangan's

³ See Marsh at column 9, line 66 through column 10, line 21.

hyperlinks can be considered to have “a validity term and conditions relate to the assignment of rights” because the hyperlinks cause a special type of click to be registered with Rangan’s system.

As previously pointed out, it is understood that the Office is taking the position that the Rangan hyperlink is a mechanism utilized as a component of a security process. However, the current claims require that auxiliary data items **INCLUDE** a validity term and conditions relative to assignment of rights for editing attributes of each auxiliary data item. Simply stated, a hyperlink is nothing more than a pointer to a location. Indeed, column 28, lines 33-50 of Rangan describe a security procedure by which users clicking the hyperlink are precluded from accessing the underlying content. Thus, it is the selection of this hyperlink which initiates a further security protocol exchange. As a result of this exchange, it is determined whether or not content which is referenced by the hyperlink may be accessed.⁴

Although the Official Action has identified the hyperlinks of Rangan as corresponding to the claimed “auxiliary data items” there is absolutely no explanation as to how such hyperlinks may **INCLUDE** a validity term and conditions relative to assignment of rights for editing attributes of each auxiliary data item as required by the claims. In addition, although the Action has made it clear that the hyperlinks of Rangan are equivalent to the claimed auxiliary data items, the Office has not explained how a validity term and conditions relative to the assignment of rights are provided for editing attributes **OF THE HYPERLINK**. Clearly, if the hyperlink is being considered as equivalent to the claimed auxiliary data item, the validity term and conditions relative to assignments of rights for editing attributes which must be included, must also be relative to the hyperlink, and not the content which may be referenced by the hyperlink. As such, it does not appear that the Office has given any weight to the language of the claims which refers to “conditions relative

⁴ See Rangan at Figure 9.

to the assignment of rights for editing attributes **OF EACH AUXILIARY DATA ITEM**” as recited in the claims.

It is well established that each word of every claim must be given weight. See In Re Wilson, 424 F.2d 1382, 1385, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970). Further, it is well established that while the U.S. Patent and Trademark Office is to give claim language its broadest “reasonable” interpretation, this does not mean that the U.S. Patent and Trademark Office can completely ignore the understanding that the artisan would have of the terminology “including a validity term and conditions relative to assignment of rights for editing attributes of each auxiliary data item” obtained in light of the specification so as to ascribe a completely different and unknown meaning to the terminology “including a validity term and conditions relative to assignment of rights for editing attributes of each auxiliary data item” See In Re Cortright, 165 F.3d 1353, 1358, 49 U.S.P.Q. 2d 1464, 1467 (Fed. Cir. 1999)’ (“Although the PTO must give claims their broadest reasonable interpretation, this interpretation must be consistent with the one those skilled in the art would reach.”) and In Re Okuzawa, 537 F.2d 545, 548, 190 U.S.P.Q. 464, 466 (C.C.P.A. 1976) citing In Re Royka, 490 F.2d 981, 984, 180 U.S.P.Q. 580, 582-83 (C.C.P.A. 1974) (“Claims are not to be read in a vacuum, and while it is true they are given the broadest *reasonable* interpretation during prosecution, their terms still have to be given the meaning called for by the specification of which they form a part.”).

Simply stated, even assuming the hyperlinks could be considered “auxiliary data items” as recited in the claims, Applicant notes that the validity term and conditions which are **included** within the claimed auxiliary data items require that these validity terms and conditions be relative to assignment of rights for editing attributes **OF EACH AUXILIARY DATA ITEM**. There has been no evidence provided by the Office as to how the hyperlinks

of Rangan include any such validity term and conditions nor how such validity terms and conditions are relative to the assignment of rights for editing attributes of each auxiliary data item. It appears as though the Office is taking the position that as the hyperlinks of Rangan are somehow associated with a security procedure, that this is enough to reject the claims, ignoring the further language of the claims; of course, such an analysis is clearly improper.

Marsh does not remedy the deficiencies discussed above, nor is it asserted for describing such features in the Official Action. Accordingly, Applicant respectfully requests that the rejection of Claims 195-203 under 35 U.S.C. §103 be withdrawn.

CONCLUSION

Should the Examiner continue to disagree with the above distinctions, Applicants respectfully request that the Examiner provide an explanation via Advisory Action pursuant to MPEP § 714.13 specifically rebutting the points raised herein for purposes of facilitating the appeal process.

Please note in accordance with the discussion herein, should the rejections in the Official Action of October 29, 2007 be maintained, Applicants intend to request a Pre-Brief Appeal Conference.

Consequently, in view of the foregoing amendment and remarks, it is respectfully submitted that the present application, including Claims 195-201 and 203, is patentably distinguished over the prior art, statutory, and such action is respectfully requested at an early date.

Respectfully submitted,

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